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Meeting of the Board of Regents | March 2009

SUNDAY, MARCH 1, 2009 - 11:20PM



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO:

FROM:

Rebecca H. Cort

SUBJECT:

Mandate Relief – Special Education Requirements

DATE:

March 4, 2009

STRATEGIC GOAL:

Goals 1 and 2

AUTHORIZATION(S):

Hyman Decl. Ex. HH- 1

Issue for Discussion

Considerations of potential cost-saving mandate relief proposals in special education.

Reason for Consideration

Policy discussion

Proposed Handling

This item will come before the Committee for discussion at its March 2009 meeting.

Background Information

In response to the fiscal situation in New York State (NYS), at its January 2009 meeting the Board of Regents discussed 11 specific State law/regulation requirements in special education that, if repealed, may result in administrative relief and/or cost savings to school districts. The proposals included only those areas that, given other safeguards in place, were not expected to significantly impact the quality of special education supports and services available to students with disabilities. Some of the proposed areas would have provided administrative relief to school districts; others may have had a more direct cost-saving effect.

Following the January 2009 Board of Regents discussion, VESID met with its Commissioner's Advisory Panel (CAP) for Special Education Services to discuss substantive considerations related to these areas. In addition, VESID convened a group of stakeholders which included individuals representing the Education Finance Advisory Committee, parents of students with disabilities, professional disability organizations, teachers unions, school superintendents, rural schools, school business officials, special education administrators, school boards and others to discuss the pros and cons of the proposed mandate relief and to consider other ideas for mandate relief in special education raised at this meeting. VESID also reviewed written comment submitted by numerous stakeholder groups with regard to each of the 11 proposed mandate relief areas.

At the February Regents meeting, the VESID Committee discussed five areas for further consideration and made the following recommendations.

- Minimum level of service requirement for Speech and Language Related Services

Proposal

Require that each student needing speech and language related services must be provided a minimum of two 30-minute sessions per week when such student is recommended to receive related services only; and repeal the minimum level of service requirement for speech and language as a related service for students where other special education services (besides related services) are recommended for the student.

The Committee requested we further review the circumstances under which a student may be recommended for less than two 30-minute sessions of speech and language per week as a special education services and share draft language for your review, especially in regard to initial recommendations for such services.

- Participation of the additional parent member (i.e., a parent of another student with a disability) on the Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE).

Proposal

Propose that the participation of the parent of a student with a disability (in addition to the parent of the student being discussed at the meeting) be a required member on the Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) for initial referrals to special education and, for subsequent meetings, only upon the written request of the parent at least 72 hours prior to the scheduled meeting.

The Committee did not support this recommendation.

- Special Education Space Planning Requirements

Proposal:

Repeal the requirement for the five-year Special Education Space Requirements Plans, beginning with the next plan due to the Department, but retain the requirement that school districts and BOCES ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.

The Committee agreed to support moving forward to propose repeal of statutory and certain regulatory space planning requirements while retaining the requirement to ensure stability of space for students with disabilities.

- Requirement that the school district obtain the consent of the parent prior to providing a student, for the first time, with special education services during July/August.

Proposal:

Propose repeal of the requirement that school districts obtain the written consent of the parent prior to the initial placement of the student in a July/August program recommended by the CSE or CPSE to prevent substantial regression even when consent for initial 10-month special education services has already been obtained.

The Committee agreed to support moving forward to propose this repeal through legislation.

- Due process statute of limitations (time period to request an impartial hearing from the date the parent or public agency knew or should have known about the action that forms the basis of the complaint).

Proposal:

Amend State law to require that an impartial hearing be commenced within one year of the date on which the parent or public agency knew or should have known about the action that forms the basis for the complaint. The time limitation would not apply if the parent is prevented from requesting an impartial hearing due to specific misrepresentations by a school district or the district's withholding of information it was required to provide under federal law.

The Committee requested data to support this recommendation, including information on the requirements of other states.

The following provides additional information for your discussion, as requested.

Minimum Level of Service Requirements

Propose the repeal that each student requiring speech and language services must be provided a minimum of two 30-minute sessions per week when such student has received speech and language therapy as a related service only and is recommended to continue to receive such services for the purpose of supporting generalization of learned speech and language skills.

We conducted a preliminary review of other states and did not identify any other states that establish a minimum level of service for speech and language therapy as a related service.

Draft proposed regulatory language

(2) For students with disabilities determined to need speech and language services, such services shall be provided for a minimum of [two 30-minute sessions] one hour each week at a frequency and duration as determined by the committee on special education except as provided in subparagraph (i) of this paragraph.

(i) A committee on special education may recommend that a student receive speech and language services for less than one hour each week only when the student has received speech and language services for a minimum of one year and continues to need such services to support generalization of learned skills.

(ii) [and the] The total caseload of such students for teachers providing such services shall not exceed 65.



Statute of Limitations in Due Process Hearings

The following provides data and information, as requested, relating to the statute of limitations to request an impartial hearing in consideration of the proposal to reestablish the State's one-year statute of limitations that was in effect prior to 2005.

Relevant data:

- 10 states have a one year statute of limitations
 - One state has a one year timeline with an exception for a two-year timeline for impartial hearing requests seeking compensatory services
- 38 states have a two year statute of limitations

- Three of these states have a shorter timeline for requests for reimbursement of the cost of a unilateral private school placement by the parent.
 - One state has a 180 day timeline
 - Two states have a 90 day timeline
- One state has a three year statute of limitations
- One state has a four year statute of limitation
- NYS data shows that the use of impartial hearing requests to resolve disputes has increased over the past three years (from 5,422 in 2004-05 to 6,075 in 2007-08). There has been an upward trend over the past three years of tuition reimbursement (from 12.55 percent of the hearing requests in 2004-05 to 25.61 percent of the hearing requests in 2007-08) all but 11 of which came from New York City.

A Broader Discussion of Cost-drivers in Special Education

Any examination of the costs for special education services must start with the recognition that individuals with disabilities are among the most vulnerable of our citizens who must be protected and supported by our government and school systems if they are going to succeed and be integrated as members of our communities. Investments in these students are necessary if we are to reduce the lifelong costs to both these individuals and their communities for failing to ensure their acquisition of the knowledge and skills necessary to live productive and independent lives.

The primary determiner of New York's extensive and complex special education system and requirements remains the federal Individuals with Disabilities Education Act (IDEA). We must continue the advocacy in Washington for the promised level of funding that Congress has failed to provide for the last 30 years. We are encouraged by the increased funding under the IDEA that is reflected in the American Recovery and Reinvestment Act (ARRA) and hope that these increases will be sustained. We believe that school districts can target these funds in such a way that have the potential to lower future special education costs.

There are identifiable cost drivers within the current system that can be reduced by taking specific actions that will result in lower special education expenditures while contributing to improved performance. Some of these cost factors include, but are not limited to:

- high classification rates
- a reliance on out-of-school district programs;
- an over-reliance on individual aides for students and/or crisis management personnel;
- adversarial relationships with parents or inappropriate programs for students with disabilities which often leads to an increased number of impartial hearings and subsequent litigation;
- necessary costs to meet the intensive special education needs of a small population of students with disabilities, including students who are surviving with severe medical conditions as well as the growing number of students identified on the autism spectrum; and
- students who require additional years to complete their schooling and/or increasingly intensive interventions, particularly when schools fail to address learning problems early.

Regents' policy on Department-wide strategies that support school district implementation of research-based approaches to address, and in some cases, offset these factors, could lead to long term cost-savings and

improved results for students with disabilities. Some of the key strategies to be considered include, but are not limited to:

- controlling classification rates of students with disabilities by instituting research-based instructional programs like Response to Intervention, particularly in elementary schools across the state, that would include instituting systems of student progress monitoring and the adjustment of instructional methodologies when progress is not occurring;
- broadening the school district-run options offered or promoting the development of consortium programs with neighboring districts;
- instituting appropriate conduct and discipline policies and procedures in school districts with a focus on positive behavioral interventions and supports as well as access to resources (including other community based services) to address the higher-level needs of students with more severe behavioral and mental health issues;
- promoting a greater priority on building relationships of trust and strong communication with parents that result in more individualized responses to meet students' needs; and
- providing earlier high-quality services to students with disabilities, thereby making it more likely that some students can benefit from reduced levels of service as they grow older.

Next Steps

VESID has instituted many initiatives to further districts' ability to address these cost-drivers. With support of the Regents, we recommend further discussions, including seeking public comment, concerning expanded replication of identified best practices that drive cost-savings by focusing on policies and procedures that would bring about long-term system reform and improvements to the special education process.

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